

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
5

6 TOMAS LOPEZ MENEWEATHER,

7 Plaintiff,

8 vs.

9 B. POWELL, et al.,

10 Defendants.
11

Case No: C 07-4204 SBA

**ORDER REOPENING ACTION
AND WITHDRAWING
REFERENCE FROM THE
FEDERAL PRO BONO PROJECT**

12 Plaintiff Tomas Lopez Meneweather (“Plaintiff”), a state prisoner, brings the instant
13 action under 42 U.S.C. § 1983, alleging that alleging Eighth Amendment violations arising
14 from unsanitary conditions of confinement while he was housed at the Salinas Valley State
15 Prison (“SVSP”). He claims that other inmates intentionally flooded their cells, causing
16 waste-contaminated water to enter his cell where it would remain until it dried up, which, in
17 turn, caused him to become ill. Plaintiff sued Defendants—SVSP correctional officers and
18 a nurse—alleging that they denied his repeated requests to clean his cell, to assign him an
19 inmate worker to clean his cell, or to release him from administrative segregation to general
20 population where he could receive an inmate worker to clean his cell. Defendants contend
21 that Plaintiff’s claims are unfounded that he lacks evidence to substantiate that the
22 contamination occurred or that he became sick as a result.

23 Earlier in the case, the Court appointed the law firm of Sheppard, Mullin, Richter &
24 Hampton LLP (“Sheppard Mullin”) to represent Plaintiff in this action on a pro bono basis.
25 Dkt. 72. After representing Plaintiff for approximately eight months, Sheppard Mullin
26 sound to withdraw as counsel of based on mandatory and permissive withdrawal provisions
27 set forth in California Rules of Professional Conduct, rules 3-700(B) and (C), respectively.
28 Dkts. 116. Plaintiff subsequently requested the appointment of substitute counsel, which

1 the Court denied. Dkts. 132, 136. Applying the governing legal standard for evaluating
2 such requests, the Court concluded, inter alia, that Plaintiff exhibited no difficulty in
3 articulating his claims in light of the complexity of the legal issues involved, and also, in
4 part, because Sheppard Mullin's withdrawal due to ethical concerns would make it "very
5 difficult to find an attorney willing to represent Plaintiff." Dkt. 136 at 2-3.

6 The most recent trial date in this action was February 22, 2016. Dkt. 201. In
7 anticipation of trial, Defendants timely filed their pretrial documents and motions in limine;
8 however, Plaintiff failed to file any documents. Instead, well after his filing deadline had
9 passed, Plaintiff filed a renewed motion for appointment of counsel and request for an
10 extension of time to file pretrial documents. Dkts. 221, 222. According to Plaintiff,
11 appointed counsel is necessary because he suffers from paralysis, which impedes the use of
12 his right hand, and that use of his left hand is impaired such that he cannot write, open mail,
13 or "turn pages." Dkt. 221. At the direction of the Court, Defendants filed a response to
14 Plaintiff's requests and submitted his medical and mental health records (under seal) to
15 facilitate the Court's evaluation his claims. Dkts. 225-4, 224-5, 225-6. Defendants stated
16 that while they opposed the reappointment of counsel, they did not oppose a brief extension
17 of time for Plaintiff to file his pretrial documents.

18 On August 26, 2016, the Court issued its ruling on Plaintiff's motion for the
19 appointment of counsel and request for an extension of time. The Court, upon reviewing
20 the records submitted, concluded although Plaintiff had overstated the nature and extent of
21 his purported afflictions. Nonetheless, out of an abundance of caution, the Court granted
22 Plaintiff's request for counsel and re-referred the action to the Federal Pro Bono Project
23 ("FPBP") to ascertain whether there is pro bono willing to represent Plaintiff in this case.
24 Dkt. 228 at 7. The Court further stated that: "In the event the FPBP is unable to locate
25 suitable counsel within the 30 day referral period, the referral will automatically be deemed
26 withdrawn and a new trial date and deadlines for pretrial documents and other filings will
27 be set." Id. at 9. The FPBP has since notified the Court that it has been unable to locate
28 counsel willing to represent Plaintiff in this case. Accordingly,

1 IT IS HEREBY ORDERED THAT:

- 2 1. The instant action shall be reopened.
- 3 2. By no later than October 26, 2017, Plaintiff shall file the following:
- 4 a. Pretrial conference statement
- 5 b. Trial brief
- 6 c. Witness list
- 7 d. Exhibit list
- 8 e. Proposed jury instructions
- 9 f. Proposed voir dire
- 10 g. Proposed form of verdict
- 11 h. Responses to Defendants' motions in limine.

12 Plaintiff is warned that in the event he fails to file any of the documents listed above
13 by October 26, 2017, the Court will dismiss the action with prejudice. See Fed. R. Civ. P.
14 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-30 (1962); Pagtalunan v. Galaza, 291
15 F.3d 639, 640 (9th Cir. 2002) (affirming dismissal of habeas petition because of petitioner's
16 disobedience with orders setting filing deadlines); see also Ghazali v. Moran, 46 F.3d 52,
17 53-54 (9th Cir.1995) (affirming dismissal of prisoner's civil rights complaint for failure to
18 file opposition to motion to dismiss as required by local rule). In the event Plaintiff timely
19 files all of the required documents, as listed, the Court will schedule a case management
20 conference to reset this matter for trial. The Court will not consider any further requests for
21 extensions of time by Plaintiff, absent unforeseen exigent circumstances and unless
22 supported by appropriate documentation.

23 IT IS SO ORDERED.

24 Dated: 9/27/17


SAUNDRA BROWN ARMSTRONG
Senior United States District Judge